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October 21, 2019

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Marlene H. Dortch
Commission Secretary
Office of the Secretary
Federal Communications Commission

**VIA ELECTRONIC COMMENT
FILING SYSTEM**

*Re: In the Matter of Rural Digital Opportunity Fund, Connect
America Fund
WC Docket No. 19-126 and WC Docket No. 10-90.*

Dear Ms. Dortch:

On behalf of the West Virginia Broadband Enhancement Council, please find included herewith for filing the *"Reply Comments of the West Virginia Broadband Enhancement Council"* in the above-referenced matters.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

James V. Kelsh
(WV State Bar No. 6617)

JVK/dlm
Enclosures
cc: Kelly Workman

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Connect America Fund)	WC Docket No. 10-90

**TABLE OF CONTENTS
TO THE REPLY COMMENTS OF
THE WEST VIRGINIA BROADBAND ENHANCEMENT COUNCIL**

I. Summary of Comments	1
II. Introduction	1
III. Explanatory Comments.....	2
IV. Conclusion	4
Citations	Appendix

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**REPLY COMMENTS OF
THE WEST VIRGINIA BROADBAND ENHANCEMENT COUNCIL**

I. Summary of Comments

In these comments, the West Virginia Broadband Enhancement Council (“Council”) makes the following recommendation:

1. The Federal Communications Commission (“FCC” or “Commission”) should adopt the recommendations made in the comments filed in this docket by the Wireless Internet Service Providers Association (“WISPA”) that the Commission should allow Rural Digital Opportunity Fund (“RDOF”) applicants to rely upon performance bonds as an alternative to letters of credit to secure performance.¹

II. Introduction

In seeking to improve broadband service to rural West Virginia, the West Virginia Legislature is looking not only to large, established carriers to meet this need, but also to small and novel providers. Certainly RDOF Phase II, and the Council hopes much of Phase I,² will be based

¹ September 20, 2019 Comments of the Wireless Internet Service Providers Association (“WISPA Comments”), In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90, at 34-39.

² Initial Comments of the West Virginia Broadband Enhancement Council, In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-9 at 5-8.

upon smaller, more granular areas than the census tracts used with the Connect America Fund (“CAF”) program. The Council, and others, expect the smaller service areas will attract interest from smaller providers. The Letter of Credit requirement used with CAF is needlessly expensive and administratively difficult for all involved. Performance bonds are a less costly, easier, and more readily available alternative to letters of credit which should be accepted by the Commission.

III. Explanatory Comments

In attempting to fill in the gaps of broadband availability in West Virginia, the West Virginia legislature is inviting small and novel providers, such as cooperative associations, to supplement the efforts of larger, more established carriers. The West Virginia legislature went so far as to set forth a template which new broadband cooperative associations can use to become formed and commence operations.³ The West Virginia legislature, and others,⁴ believe that shrinking the rural digital divide will require new entrants into the industry.

The Notice of Proposed Rulemaking (“NPRM”) states that the Commission proposes “to adopt here the same letter of credit rules we adopted for the CAF Phase II auction.”⁵ However, the Commission also seeks “comment on whether we should decline to require a letter of credit for the Rural Digital Opportunity Fund. Are there viable, less costly alternatives that still minimize risk to public funds?”⁶

Numerous comments were filed complaining of the burden of the letter of credit requirement. The Internet and Television Association stated that the letter of credit requirement in CAF “led to well-established broadband providers declining to participate in past high-cost

³ W.Va. Code §31G-2-6.

⁴ WISPA Comments, at 38.

⁵ August 1, 2019 Rural Digital Opportunity Fund Notice of Proposed Rulemaking, WC Docket Nos. 19-126 and 10-90 (“NPRM”), ¶84.

⁶ NPRM, ¶89.

auctions. . .because the Commission’s letter of credit requirements are extremely burdensome and may conflict with obligations companies have to existing banks and lenders.”⁷ If well-established broadband providers cannot surmount the FCC’s letter of credit hurdle, there is very little likelihood that small and novel providers will be able to do so. The consequence of effectively barring small and novel providers from RDOF will be opportunities lost to extend service to unserved areas, and diminishment of the bang the Commission gets for its buck.

The National Rural Electric Cooperative Association observes that “[t]he LOC is expensive to obtain and maintain, which has the effect of diverting needed FCC funding from its intended target – actually providing service to “new consumers. . . . If a less burdensome option is available it should be adopted.”⁸ WISPA states that the cost to maintain a letter of credit to a CAF recipient “can approach 10 percent of the annual supports amount.”⁹

In addition to being expensive, letters of credit are administratively demanding upon the limited time and attention of an applicant’s management resources. Letters of credit are customarily issued for one-year terms, with an annual renewal obligation. Commission Staff are also burdened with checking on the status of letter of credit renewals. The renewal process carries with it a risk that renewal may not be obtainable, which can be expected to lead to half completed deployment projects. While the Commission may be able to recover some funds in such a situation, the principal objective of RDOF to see greater deployment of broadband will have been thwarted.

The customary one-year term for letters of credit make them a poor fit for multiple year broadband deployment projects. In contrast, performance bonds, which typically do not

⁷ September 20, 2019 Comment of NCTA – The Internet and Television Association, In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90, at 9.

⁸ September 20, 2019 Comments of the National Rural Electric Cooperative Association, In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90 at 5.

⁹ WISPA Comment, at 36.

require renewal and stay in effect for one year after substantial completion of a project, are well suited to RDOF deployment projects. Performance bonds are also significantly less expensive than letter of credit, costing “about 0.5-1.5 percent of the value of the amount to be secured.”¹⁰

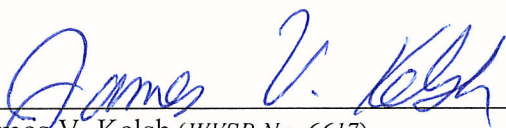
WISPA has provided to the Commission terms and conditions which the Commission should adopt in creating a performance bond option as an alternative to a letter of credit for RDOF.¹¹ The Council endorses and recommends WISPA’s well developed alternative.

IV. Conclusion

The West Virginia Broadband Enhancement Council appreciates the opportunity to submit comments and look forward to future opportunities for the Council to collaborate with the FCC and broadband service providers to improve these important programs. The Council stands by its Initial Comments, and further urges the Commission to adopt rules which will allow applicants to satisfy the Commission’s financial security concerns by utilization of performance bonds.

WEST VIRGINIA BROADBAND
ENHANCEMENT COUNCIL

By Counsel



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¹⁰ WISPA Comment, at 36.

¹¹ WISPA Comments, at 34-39.

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	<u>Page</u>
<u>W.Va. Code §31G-2-6</u>	2
August 1, 2019 Rural Digital Opportunity Fund Notice of Proposed Rulemaking, WC Docket Nos. 19-126 and 10-90	
¶ 84.....	2
¶ 89.....	2
September 20, 2019 Comments of the Wireless Internet Service Providers Association (“WISPA Comments”), In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90.....	1-4
Initial Comments of the West Virginia Broadband Enhancement Council, In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90	2
September 20, 2019 Comment of NCTA – The Internet and Television Association, In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90	3
September 20, 2019 Comments of the National Rural Electric Cooperative Association, In the Matter of Rural Digital Opportunity Fund FCC WC Docket No. 19-126 and Connect America Fund FCC WC Docket No. 10-90	3